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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-eighth session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Joint written statement submitted by Caritas Internationalis and the Lutheran World Federation, non-governmental organizations in consultative status (category II) and the World Christian Life Community, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[2 July 1996]

1. The World Christian Life Community, the Jesuit Refugee Service, Caritas Internationalis and the Lutheran World Federation wish to draw the attention of the experts of the Sub-Commission to the plight of some 90,000 Bhutanese refugees of ethnic Nepali origin currently residing in camps in eastern Nepal, and another estimated 30,000 unassisted Bhutanese refugees living outside these camps in both Nepal and India. These refugees represent more than one sixth of the total population of Bhutan. Half of the refugee population living in the camps in Nepal are women and about one third are children.

Most of the refugees wish to return to the place of their habitual residence in southern Bhutan. The Royal Government of Bhutan, however, appears determined not to allow them re-entry. Seven rounds of bilateral talks to resolve this situation between the Royal Governments of Bhutan and Nepal during 1994-1996, the last of which took place in April 1996, have not achieved any tangible results towards resolving the situation.

2. Observers have held much hope for the latest round of bilateral talks, as the talks were conducted for the first time by the foreign ministers of the two countries. The continuing stalemate in these bilateral negotiations, however, underlines the risk of these refugees eventually becoming stateless by being denied their fundamental human right to a nationality by the Royal Government of Bhutan. The Royal Government of Bhutan maintains that many of the persons registered in the camps in Nepal as refugees have no claim to Bhutanese citizenship and may never have resided in Bhutan. The Office of the United Nations High Commissioner for Refugees (UNHCR), on the other hand, reports that since some form of screening began in June 1993, the overwhelming majority of the refugees who have entered the camps have been able to show documentary proof of their long-term habitual residence and/or proof of Bhutanese nationality and a sample survey conducted during the last quarter of 1995 of camp residents by the Jesuit Refugee Service substantiates these findings.

3. The European Parliament adopted a resolution on 14 March 1996 on the plight of Nepali-speaking refugees from Bhutan (B4-329, 344, 402 and 406/96). This resolution recognizes the human rights abuses which led to large-scale exoduses of Bhutanese refugees and raises concern about the deteriorating conditions in the refugee camps in Nepal as assistance services are being scaled down. It further calls upon the Royal Governments of Bhutan and Nepal to reach an agreement which will allow the early, voluntary repatriation of the refugees to their country of origin. In this connection the resolution notes that "most refugees would appear to qualify under international law as being genuine citizens of Bhutan and considers that Bhutan's Citizenship Act of 1985 may need to be modified as a result". It also calls upon the Indian authorities to acquit all persons arrested during the peaceful protest demonstrations.

Background

4. The three main ethnic groups of the Kingdom of Bhutan are the Ngalongs, the ruling minority, the Sarchops and the ethnic Nepali population. Population statistics for Bhutan and the ethnic breakdown of these figures are a source of considerable controversy and the accuracy of available population data is disputed. Also disputed is the date of the original arrival of the ethnic Nepalis in Bhutan. While in the early 1950s, the Royal Government of Bhutan appeared largely sympathetic towards the Nepali population, subsequent decades saw a distinct change in the Government's attitude towards ethnic Nepalis living in the south of the country, culminating in rigorous policies to integrate ethnic Nepalis into northern Bhutanese culture by the late 1980s. A policy of "One nation, one people", introduced in January 1989, imposed the language, culture, traditions, customs and dress code (Driglam Namzha) of the ruling minority upon the rest of the population.

5. A new Citizenship Act promulgated in 1985 provided the foundation for a progressive worsening of the situation of the ethnic Nepali population in southern Bhutan. A census carried out in 1988 applied standards of proof of citizenship which were considered by many observers to have been unduly harsh and arbitrary, and seemingly targeted the southern districts of Bhutan. The census, in combination with the "Bhutanization" policy, caused considerable anxiety, resentment and apprehension among the ethnic Nepali population, culminating in unprecedented demonstrations in the south of the country in late 1990.

6. Following the demonstrations, widespread human rights violations have been documented by impartial and respected international human rights organizations detailing intimidation, arbitrary arrest and detention, rape, and torture that have been committed against ethnic Nepali southern Bhutanese. While in some cases the violations appear to have been in retaliation to the protests, in others, the violations, or threats thereof, appear to have been deliberately aimed at forcing ethnic Nepalis to leave the country. Thousands of ethnic Nepalis consequently did just that. From about mid-1992 onwards the methods of persecution appear to have changed, with refugees generally citing forcible evictions, the destruction of houses, as well as harassment and intimidation by local authorities. Refugees also report having been coerced into signing so-called "voluntary" migration forms.

International and national legal context

7. The Kingdom of Bhutan is a signatory since 1973 to the International Convention on the Elimination of All Forms of Racial Discrimination. Despite this declaration of intent it has to date not yet ratified the Convention. The country is, moreover, a party to the Convention on the Elimination of Discrimination against Women (CEDAW) and to the Convention on the Rights of the Child (CRC) since 1981 and 1990 respectively. As a State Member of the United Nations, Bhutan is moreover bound to uphold the principles of the Charter of the United Nations as well as of the Universal Declaration of Human Rights. While the Royal Government of Bhutan has not acceded to the international Bill of Human Rights consisting of the two international covenants on civil and political rights and economic, social and cultural rights, it is bound to adhere to the provisions set forth in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the United Nations General Assembly in resolution 47/135 in December 1992.

8. According to the 1995 report to the Commission on Human Rights of the Working Group on Arbitrary Detention on its visit to Bhutan (E/CN.4/1995/31/Add.3), King Jigme Singye Wangchuck is vested with supreme power, including that of head of State and supreme judge. For most important decisions he is held to be, directly or indirectly, the ultimate authority. The country has no written constitution.

9. By virtue of the Nationality Law of Bhutan, enacted in 1958, the then King granted Bhutanese citizenship to Nepali settlers living in Bhutan. The granting of citizenship in 1958 was notified by royal proclamation, but was not accompanied by any special certification process. The Bhutan Citizenship Act of 1977 amended the nationality law and made eligibility criteria more

stringent. The Bhutan Citizenship Act of 1985 was interpreted during the census of 1988 as further tightening the regulations for eligibility by restricting citizenship to ethnic Nepali adults who owned land and had lived in Bhutan since 1958.

Recent developments

10. The current situation of the Bhutanese refugees is marked by increasing frustration of the population in the camps in eastern Nepal that has led inter alia to peaceful demonstrations by groups of refugee "appeal marchers" over the past months. In January 1996, some 1,000 Bhutanese refugees from the camps began walking via India towards Thimphu, the capital of Bhutan, in order to deliver a petition to the King of Bhutan. Upon entry into India all were immediately detained under provisions of the Indian Penal Code. Although at least one Indian court has in the meantime ruled the arrest of one group so detained as unconstitutional and ordered their release, police have continued repeatedly to arrest and subsequently release groups of Bhutanese refugees en route to Bhutan. At the time of submission of this statement, some 791 "appeal marchers" remain in custody in jails in West Bengal, India. Many of the marchers have been imprisoned for more than five months now. Serious concerns have been raised not only regarding the legitimacy of the detention, but also with regard to the deteriorating health of some of the marchers and the brutal treatment many of them have been subjected to by the Indian prison authorities concerned, culminating in the death in custody of 50-year-old Mr. Babu Ram Shengden on 13 June. The treatment the refugees have received from the Indian authorities has given rise to numerous urgent appeals by various human rights organizations around the world and 142 out of 449 Bhutanese refugees detained in Berhampur Central Jail started an indefinite hunger strike on 21 June.

11. The World Christian Life Community, in consultation with the Jesuit Refugee Service, drew the attention of the Commission on Human Rights to the situation of the Bhutanese refugees in both Nepal and India during its fifty-second session (E/CN.4/1996/NGO/43). This intervention was subsequently followed up by a joint oral intervention to the inter-sessional Working Group on Minorities at its latest session, held from 30 April to 3 May 1996, by the Jesuit Refugee Service, Caritas Internationalis and the Lutheran World Federation, three international organizations providing assistance to the Bhutanese refugees in the camps in Nepal.

12. During the recent meeting of the Standing Committee of the UNHCR Executive Committee, held from 25 to 27 June 1996, the Ambassador of Denmark to the United Nations, Jakob Esper Larsen, in his capacity as Chairperson of the Executive Committee of UNHCR, delivered a report on his mission to India, Bhutan and Nepal from 6 to 27 January 1996. In his report he recommended the appointment of an impartial mediator to facilitate, in cooperation with representatives of the Royal Governments of both Bhutan and Nepal as well as UNHCR, a verification process of the Bhutanese refugees in Nepal. He further pointed out that such a process should be given priority over continued political negotiations between the two countries, which had achieved little progress in the past. He further called upon the Government of India to play a mediating role in facilitating a solution to the current impasse. Ambassador Larsen, moreover, announced the extension of an official invitation

by the Royal Government of Bhutan to UNHCR to visit Bhutan and expressed his hope that this would further mutual confidence and cooperation between the Royal Government of Bhutan and the organization mandated by the international community to protect refugees and seek solutions to their plight.

Recommendations

13. In the light of the continuing impasse concerning this situation and with a view to contributing to a peaceful and constructive solution to the plight of the Bhutanese refugees, we urge the members of the Sub-Commission:

To prepare a comprehensive report on the situation of the Bhutanese refugees in Nepal and India and adopt a resolution on the issue, to be submitted to the next session of the Commission on Human Rights;

To request the High Commissioner for Human Rights, in close cooperation with the Office of the United Nations High Commissioner for Refugees, to examine the reasons for the exodus of the refugees and to mediate among concerned Governments with a view to arriving at an early resolution of the situation and to take all necessary steps, in line with the Convention on the Reduction of Statelessness of 1961, to ensure that the refugees do not become stateless;

To call upon the Royal Government of Bhutan to repeal its 1985 Citizenship Act and its "One nation, one people policy" of 1989 and to replace them with laws consistent with international human rights law, the letter and spirit of the Charter of the United Nations and the Universal Declaration of Human Rights, the two covenants on civil and political rights and on economic, social and cultural rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as to ratify the Convention on the Elimination of All Forms of Discrimination against Women without further delay;

To recommend that the Secretary-General of the United Nations pay special attention to the plight of the Bhutanese refugees in his forthcoming report to the Commission on Human Right on mass exoduses;

To urge the Commission on Human Rights to request the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance to visit Bhutan and provide a report on his findings forthwith and to request the Royal Government of Bhutan to extend an invitation to him;

To call upon the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child to consider any violation of the conventions with respect to refugee women and children prior to, during and after their flight from Bhutan;

To urge the Royal Governments of both Bhutan and Nepal to resume their bilateral talks without delay and to allow for the assistance of a neutral mediator in their negotiations to assist in finding a solution to the plight of the refugees;

To call upon the Royal Government of Bhutan to recognize the Office of the United Nations High Commissioner for Refugees (UNHCR) as the expert body mandated by the United Nations to determine refugee status, work towards a reduction of the phenomenon of statelessness, and to facilitate and monitor the voluntary return of refugees to their homes in conditions of safety and dignity, and to welcome in this connection the recent extension of an invitation to the Office of the United Nations High Commissioner for Refugees to Bhutan;

To urge the Government of India to promptly release the Bhutanese "appeal marchers" currently incarcerated in India.